

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

NEW-COM, INC.

Employer/Petitioner

and

Case 28-UC-232

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 12, AFL-CIO**

Union

DECISION AND ORDER

A petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, has been carefully investigated and considered

Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the Regional Director finds:

1. The Petitioner/Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. On about June 16, 2003, the Petitioner/Employer and the Union entered into a voluntary Recognition Agreement. The Unit described in the Recognition Agreement is as follows:

INCLUDED: All full-time and regular part-time mechanics, welders, service and maintenance personnel, and mechanics helpers employed by the Employer at or out of its facility located at 412 East Gowan, Las Vegas, Nevada.

EXCLUDED: All other employees, parts employees, transport drivers, general yard personnel, office clerical employees, professional employees, guards and supervisors, as defined in the Act.

4. The Petitioner/Employer seeks to clarify a unit represented by the Union as follows:

INCLUDED: All full-time and regular part-time mechanics, welders, service and maintenance personnel, and mechanics helpers employed by the Employer at or out of its facility located at 412 East Gowan, Las Vegas, Nevada.

EXCLUDED: All employees employed by MMC, Inc.

5. The proposed Unit differs from the currently recognized Unit. The Petitioner/Employer seeks to clarify the existing Unit exclusion by excluding any employee employed by a different company named MMC, Inc. MMC, Inc. is not a party to the Recognition Agreement between the Petitioner/Employer and the Union.

6. The Petitioner/Employer and the Union have been engaged in collective-bargaining negotiations in an attempt to reach an initial collective-bargaining agreement. No agreement has yet been reached. The investigation of the subject petition disclosed that the Petitioner/Employer seeks to clarify the bargaining unit to exclude any employee employed by MMC, Inc. The Petitioner/Employer seeks such clarification essentially on the grounds that the Union has instituted legal actions against both the Petitioner/Employer and MMC, Inc. before the Nevada District Court and Nevada Labor Commission seeking monetary damages for alleged prevailing wage violations. Petitioner/Employer asserts the Union is

seeking such damages for unit employees employed by the Petitioner/Employer and employees employed by MMC, Inc. Petitioner/Employer further asserts the Union seeks joint and several liability of both the Petitioner/Employer and MMC, Inc. Thus, Petitioner/Employer claims the Union is seeking to expand the currently recognized unit to include employees of MMC, Inc. During collective-bargaining negotiations, the Union has not attempted to expand the currently recognized unit to include any employees of MMC, Inc.

7. Clarification of the bargaining unit to exclude employees employed by MMC, Inc. is not warranted inasmuch as the Union's separate and distinct Nevada District Court and Nevada Labor Commission actions are not a sufficient demand to invoke a UC proceeding. Although UC petitions are most frequently used to clarify unit placement issues, they have also been used to clarify unit scope issues. *Armco Steel Co.*, 312 NLRB 257, 259 (1993). Additionally, the Union has not attempted to include any MMC, Inc. employees in the currently recognized unit during any collective-bargaining negotiations with the Petitioner/Employer. Thus, it was determined that the Union has not made a "representational claim" for any employees employed by MMC, Inc. Accordingly, there are insufficient grounds to entertain the Petitioner/Employer UC petition. *Coatings Application and Waterproofing Company of Indiana, Inc.*, 307 NLRB 806 (1992). Under these circumstances, I find that further proceedings on this petition are not warranted.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it is hereby, dismissed.

REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington, D.C. must receive this request by November 21, 2003. A copy of the request for review should also be served on the undersigned at the Las Vegas Resident Office.

Dated at Phoenix, Arizona this 7th day of November 2003.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

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